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May 24, 2012

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: *In the Matter of Petitions for Waiver of Commission's Rules Regarding Access to Numbering Resources*, CC Docket 99-200; *Connect American Fund, et al.*, Further Notice of Proposed Rulemaking on IP-to-IP Interconnection Issues, WC Docket No. 10-90; GN Docket No. 09-51; WC Docket No. 07-135; WC Docket No. 05-337; CC Docket No. 01-92; CC Docket No. 96-45; WC Docket No. 03-109; WT Docket No. 10-208

Dear Ms. Dortch:

Bandwidth.com, Inc., Level 3 Communications, LLC, HyperCube Telecom, LLC, and COMPTel (collectively "CLEC Coalition") submit this ex parte responding to the May 7, 2012 ex parte letter filed by Vonage<sup>1</sup> and providing additional detail relating to serious industry concerns raised by the petitions filed by Vonage and the fourteen other providers ("Petitioners") that have filed petitions for limited waiver of Section 52.15(g)(2)(i) of the Commission's rules regarding access to number resources.

Despite several responsive ex partes, comments and reply comments from the various petitioners, many fundamental problems and unanswered questions remain. This letter will focus on Vonage's lack of expertise concerning numbering and number exhaust issues; critical number portability concerns that have yet to be addressed by the Commission; and a variety of additional questions that have been raised repeatedly by multiple parties but which Vonage has yet to address. In light of these unanswered questions, and the far-reaching negative impacts on the industry as a whole, Petitioners (including Vonage) have failed to demonstrate that they have met the heavy burden to demonstrate that deviation from the Commission's rules serves the public interest.

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<sup>1</sup> Ex Parte Letter from Brita D. Strandberg, Counsel to Vonage Holdings Corp., to Marlene H. Dortch, CC Docket 99-200 (May 7, 2012) ("*Vonage May 7 Ex Parte*").

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## **I. Vonage Miscalculates the Impact of the Petitions on Number Exhaust**

Vonage underestimates the adverse impact of the direct assignment of numbering resources to non-carriers. Vonage makes two threshold assumptions that color its analysis of all other issues, but that would lead the Commission astray in its efforts to make an orderly transition to an all-IP world. First, in the *Vonage May 7 Ex Parte*, Vonage assumes that the Commission could grant *only* the Vonage Petition and leave the remaining fourteen (14) petitions pending.<sup>2</sup> Past ex partes filed by Vonage have also assumed that the Commission could grant only the Vonage petition without discriminating against pending as well as future petitioners.<sup>3</sup> Vonage's goal of being let out of the starting gate way ahead of other similarly situated providers is blatantly anticompetitive. The way to avoid the result of the Commission picking winners and losers is to proceed in a nondiscriminatory manner through a generally applicable rulemaking, if the Commission is intent on allowing non-carriers to obtain direct access to number resources.

Second, Vonage openly admits that it is encouraging the Commission to proceed on an experimental basis, and that by granting Vonage's waiver request in advance of addressing the necessary particulars in a rulemaking, that "will provide the Commission with real-world data that will aid it in the rulemaking process."<sup>4</sup> Vonage's idea of experimenting with live customers and live traffic is simply a bad idea. Rather than engaging in discriminatory regulatory risk-taking, the Commission need simply retain proven common sense regulation and continue to manage numbering resources through regulated carriers.

Indeed, the *Vonage May 7 Ex Parte* belies Vonage's poor understanding of industry numbering guidelines that: 1) miscalculates the impact of the pending petitions on number exhaust; and 2) demonstrates that Vonage lacks the expertise to take on the responsibility of direct number assignment. Vonage's number exhaust analysis, in addition to being based on the discriminatory addition of just one non-carrier (Vonage) to the market, assumes that Vonage can use its existing indirectly-assigned phone numbers to obtain its Local Routing Numbers ("LRNs"):

The CLEC Coalition and California raise similar concerns about the number of LRNs Vonage might require. These concerns are misplaced, however, as Vonage has numbers available to use as LRNs in all of its existing rate centers. Vonage

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<sup>2</sup> *Vonage May 7 Ex Parte*, at 6-7.

<sup>3</sup> Ex Parte Letter from Brita D. Strandberg, Counsel to Vonage Holdings Corp., to Marlene H. Dortch, CC Docket 99-200, at 2 (Dec. 6, 2011).

<sup>4</sup> *Vonage May 7 Ex Parte*, at 4.

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would thus need LRNs only in the event it requests numbers from a new rate center. Even then, Vonage would require only a handful of LRNs, as it would require only one LRN per rate center for each Vonage switch (or transit provider's switch), a number that could be as few as four and is likely to be at most 50.<sup>5</sup>

Vonage's understanding that it already "has numbers available to use as LRNs in all of its existing rate centers," by virtue of the phone numbers assigned to its current wholesale carriers is mistaken. Although Vonage could maintain its current arrangement where it relies upon wholesale providers for numbers, Vonage cannot use its wholesale partners' existing numbers to establish Vonage LRNs. The ATIS Local Routing Number ("LRN") Assignment Practices are clear on this point: "The LRN must be selected and assigned from a valid NPA/NXX *that has been uniquely assigned to the service provider* by the Central Office Code Administrator and published in the LERG Routing Guide."<sup>6</sup> Accordingly, Vonage's suggestion that it would use its existing numbers, which obviously were not initially assigned to Vonage, would violate the *ATIS Assignment Guidelines*.

Moreover, because of this misunderstanding, Vonage's calculation that it would use between 4 and 50 new codes to establish its LRNs nationwide is not reliable. The concerns expressed by the state commissions, the CLEC Coalition, NTCA, and NCTA that permitting direct number assignment to virtually any VoIP provider would accelerate number exhaust are valid. Given Vonage's naiveté, the Commission should pay heed to the state commissions and other industry participants that understand that going down the road of granting the petitions will significantly accelerate number exhaust.

The *Vonage May 7 Ex Parte* also belies the fact that Vonage generally does not understand what it means to be a "Code Holder." For instance, as described below, Vonage claims that it will take a series of steps that, if taken, would clearly require that it become a Code Holder. In addition to the quote above relating to its plan to use existing LRNs of wholesale carriers as its LRNs (*Vonage May 7 Ex Parte*, at 7), Vonage states that "Vonage would establish separate CLLI Codes and LRNs on the competitive tandem provider's switch for the purpose of routing calls destined for Vonage telephone numbers (*i.e.*, Vonage's telephone numbers would home on the competitive tandem provider's switch)."<sup>7</sup> Again, as explained immediately above, in order to obtain LRNs, a carrier must use its own codes, and not the codes of a partner carrier.<sup>8</sup>

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<sup>5</sup> *Vonage May 7 Ex Parte*, at 7. To note a further error, Vonage is not required to establish a new LRN per rate center, but per LATA.

<sup>6</sup> ATIS Location Routing Number ("LRN") Assignment Practices, ATIS Standard ATIS-0300065, § 4 (Sept. 30, 2011) ("*ATIS Assignment Guidelines*") (emphasis added).

<sup>7</sup> *Vonage May 7 Ex Parte*, at 6.

<sup>8</sup> See *ATIS Assignment Guidelines*, § 4.

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After repeatedly stating that will agree to take actions that would require it to become a Code Holder, Vonage then states that it has no intention of becoming a Code Holder:

In any event, Vonage does not anticipate becoming a Code Holder, as Vonage does not anticipate ordering 10,000 number blocks. Rather, Vonage expects to order numbers in 1,000s blocks, and to promptly return numbers it does not immediately require. Indeed, Vonage has suggested that its waiver be subject to aggressive numbering utilization requirements that will, as a practical matter, dictate that Vonage order numbers in 1,000s blocks and promptly return unused numbers. Accordingly, Vonage would not object were the Commission to condition Vonage's waiver on Vonage's agreement not to become a Code Holder.<sup>9</sup>

If Vonage is not a Code Holder, it cannot have its own LRNs, it cannot participate in number pooling, and it cannot participate in number porting. More than anything, the confusion about basic numbering principles that marks the *Vonage May 7 Ex Parte* demonstrates that Vonage is not prepared for the direct assignment of numbers, and that the Commission would be taking a high-risk course to consider a waiver permitting such assignment.

Vonage also does not seem to understand that there are other circumstances whereby it could become a Code Holder by default, even if it straightened out its plans and opted initially to operate without becoming a Code Holder. For example, if additional phone numbers are required in a given rate center where no additional pooled blocks are available, Vonage will be required to replenish the pool by becoming a Code Holder for a new NXX assigned to the desired rate center and will donate the remaining blocks back to pooling.

These are not the only errors in the *Vonage May 7 Ex Parte*. Vonage claims that it cannot strand numbers, as the California CPUC indicates it is likely to do, because Vonage will be subject to a 65% overall number utilization requirement and because it "will return numbers wherever and whenever it is able to do so."<sup>10</sup> However, when a new NXX Code is opened in order to establish an LRN or to replenish the pool, all 10,000 numbers are assigned to the rate center in which the code was requested. If numerous new VoIP provider/petitioners were to enter the market, it is feasible that the amount of number resources assigned to a given rate center could exceed the demand in that rate center, effectively stranding number resources which could otherwise be utilized. To be clear, this stranding effect occurs regardless of whether numbers are returned by Vonage or others; the numbers remain assigned to that rate center, where they will go unused.

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<sup>9</sup> *Vonage May 7 Ex Parte*, at 6.

<sup>10</sup> *Id.* at 7.

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In sum, Vonage cannot be relied upon to speak to the impact of issuing a series of new waivers on number exhaust. The state commissions, directly responsible for number administration and conservation, have recently pointed to the dire need for continuing joint state-federal efforts to decelerate rather than accelerate number exhaust trends.<sup>11</sup> The Commission would be well served to follow the advice of the states and industry participants, including the NARUC, the California Commission, the CLEC Coalition, NCTA, and NTCA. Furthermore, Vonage has demonstrated a tenuous and confused understanding of numbering issues that is itself ample cause for the Commission to deny Vonage's petition. If the Commission did not already have serious reservations about providing direct access to number resources to non-carriers, the *Vonage May 7 Ex Parte* should give the Commission pause as to the wisdom of adopting Vonage as the VoIP provider standard bearer for direct access to number resources.

## **II. The Commission Has Never Addressed VoIP Provider Number Portability without a Carrier Numbering Partner**

The Vonage and other waiver petitions raise additional concerns that neither Vonage nor the Commission has considered. If the Vonage Petition were granted prior to completing a rulemaking proceeding, there would be no clear direction as to the number portability responsibilities of carriers and providers alike. While the Commission has addressed VoIP provider number portability in its 2007 Report and Order, that Order only addressed circumstances where a VoIP provider is the customer of a wholesale carrier.<sup>12</sup> In extending number portability to interconnected VoIP providers, the Commission found:

It is well established that our rules allow only carriers direct access to NANP numbering resources to ensure that the numbers are used efficiently and to avoid number exhaust. Thus, many interconnected VoIP providers may not obtain numbering resources directly from the NANPA because they will not have obtained a license or a certificate of public convenience and necessity from the relevant states. Interconnected VoIP providers that have not obtained a license or certificate of public convenience and necessity from the relevant states or otherwise are not eligible to receive numbers directly from the administrators may

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<sup>11</sup> *In the Matter of Petitions of SmartEdgeNet, LLC and Millicorp, LLC for Limited Waiver of Section 52.15(g)(2)(i) of the Commission's Rules Regarding Numbering Resources*, CC Docket No. 99-200, Comments of the California Public Utilities Commission and the People of the State of California, at 5-6 (filed May 8, 2012).

<sup>12</sup> *In the Matter of Telephone Number Requirements for IP-Enabled Service Providers*, WC Docket No. 07-243, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking (rel. Nov. 8, 2007) ("*VoIP Number Portability Order*").

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make numbers available to their customers through commercial arrangements with carriers (*i.e.*, numbering partners).<sup>13</sup>

Throughout the *VoIP Number Portability Order*, the Commission limits its guidance to circumstances where a VoIP provider works in tandem with a wholesale numbering partner: “interconnected VoIP providers generally obtain NANP telephone numbers through commercial arrangements with one or more traditional telecommunications carriers. As a result, the porting obligations to or from an interconnected VoIP service stem from the status of the interconnected VoIP provider’s numbering partner and the status of the provider to or from which the NANP telephone number is ported.”<sup>14</sup> Every example of porting obligations provided by the Commission in the Order relates to “an interconnected VoIP provider that partners with a wireline carrier for numbering resources . . . .”<sup>15</sup> The only other circumstance addressed by the Order is the case where the interconnected VoIP provider is itself a carrier, and has a separate obligation to port numbers (and receive numbers) as a carrier.<sup>16</sup>

The Commission’s focus on carrier obligations in the *VoIP Number Portability Order* is consistent with the statutory definition of number portability, which is limited to the porting of numbers used by carriers for telecommunications services:

The term ‘number portability’ means the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of the quality, reliability, or convenience when switching from one telecommunications carrier to another.

47 U.S.C. § 153(a)(46). The Act’s statutory number portability obligation therefore applies “when switching from one telecommunications *carrier* to another” and to users of “*telecommunications services*.” The Commission, in addition to not having considered the scope of the number portability obligation where no carrier partner is involved, has not explained how “number portability” as defined in the statute can apply to a provider such as Vonage that considers itself neither a “carrier” nor a provider of “telecommunications services,” particularly if it were interacting with another non-carrier provider of non-telecommunications-services.<sup>17</sup>

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<sup>13</sup> *VoIP Number Portability Order*, ¶ 20 (citations omitted). Although the same order states that it is not intended to prejudge the pending waiver petitions (*id.*, ¶ 20 & n.59), it also fails to provide any guidance as to number portability obligations under any circumstances other than where a VoIP provider partners with a wholesale carrier.

<sup>14</sup> *VoIP Number Portability Order*, ¶ 34.

<sup>15</sup> *Id.*, ¶ 34. See generally, ¶¶ 34, 35.

<sup>16</sup> *Id.*, ¶ 35 & n.117.

<sup>17</sup> The Commission makes some effort to provide a legal rationale for the imposition of the “number portability” obligation to VoIP providers and their carrier partners in the *VoIP Number Portability*



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It is important to note in this context that the Commission cannot provide generic guidance to all carriers and other providers as to the details of new porting obligations in a waiver proceeding. While the Commission can provide conditions applicable to Vonage, it cannot establish rules or other guidance of general applicability to all carriers without first conducting a rulemaking proceeding. The CLEC Coalition submits that no provider has met the heavy burden to demonstrate that the current arrangement, where only carriers can obtain direct access to number resources, is fundamentally flawed such that it would be in the public interest to upend historical and far-reaching industry practices.

### **III. The Vonage May 7 Ex Parte Fails to Address the Remaining Operational and Regulatory Issues Previously Raised by the CLEC Coalition and Others**

Although Vonage attempts to refute some industry arguments in the *Vonage May 7 Ex Parte*, there are a wide variety of issues that Vonage has never rebutted. Vonage's failure to address critical issues relating to federal regulation, interconnection, intercarrier compensation, and a qualification standard represents grounds for denial of its Petition.

Federal Common Carrier Regulation. Vonage has not, for example, responded to the fact that permitting non-carriers to obtain phone numbers will allow them to avoid important federal regulations. The CLEC Coalition has pointed in the past to domestic transfer of control requirements (47 C.F.R. § 63.04), international section 214 requirements (47 C.F.R. § 63.18 *et seq.*), and notification to become affiliated with a foreign carrier (47 C.F.R. § 63.11). Although Vonage may not be concerned about the phasing out of Commission regulations that serve an important public interest purpose, the Commission has an obligation to ensure continued compliance with common carrier regulations. If Vonage and other petitioners were, for example, to be acquired by a foreign carrier, there would be no requirement to notify the Commission, even though it would be a direct holder of a scarce and valuable U.S. resource.

Some may argue that antiquated carrier regulations that serve no valid purpose should not burden new providers. However, antiquated carrier regulations should not apply to *any* carrier or provider if they truly serve no valid purpose, but the proper way to eliminate them is to review the regulations as they apply across-the-board. Creating a new class of providers through undefined standards and procedures, which are free from all existing carrier regulations, and then gradually reintroducing those regulations that are later found to be critical to the public interest is not a valid administrative procedure or a viable way to regulate.

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*Order.* Id., at ¶¶ 21-29. This rationale is part of an Order that sets as its starting point that only carriers can obtain direct access to phone numbers, and does not begin to address, for example, the port from one non-carrier to another non-carrier of a non-telecommunications service, which could not be shoe-horned into the statutory definition of “number portability.”

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Interconnection. Vonage has also never explained its “interconnection” arrangements or responded as to whether its “interconnection” agreements would be subject to section 251 and 252. Although this issue has been raised by several different parties,<sup>18</sup> Vonage remains silent. To the extent any action here were to lead ILECs to believe that they could engage in discriminatory behavior, it would not further the Commission’s interconnection goals. The Commission is in the midst of addressing critical interconnection issues in the Further Notice of Proposed Rulemaking and should resolve those issues before adding any further scenarios that would need to be addressed.

Moreover, contrary to AT&T’s claims, granting a waiver regarding numbering resources to Vonage will not facilitate good faith negotiations for IP-to-IP interconnection agreements, and particularly not for the type of interconnection arrangements that are needed for the type of VoIP services which commenters in the Commission rulemaking on this very issue are seeking. Of course, one of the biggest obstacles to resolving such issues is AT&T and its unwillingness to assume its obligations under the Act.<sup>19</sup>

Intercarrier Compensation. Vonage continues to evade any meaningful discussion about its responsibility for payment of intercarrier compensation associated with its traffic. Vonage does go out of its way to make it clear that it will team up with its “CLEC partners” to ensure that they will continue to *collect* intercarrier compensation.<sup>20</sup> But Vonage does not commit that either Vonage or its CLEC partners will *pay* intercarrier compensation associated with Vonage’s traffic. In fact, the Commission cannot obtain a commitment from Vonage’s current and prospective CLEC partners that they will make such payments in a Vonage waiver proceeding.

Federal Qualification Standards. Vonage has never recommended a specific, distinct legal standard to determine when a provider is qualified for the direct assignment of phone numbers. The CLEC Coalition discussed at length the need for a clear federal qualification test

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<sup>18</sup> *In the Matter Petitions for Waiver of Commission’s Rules Regarding Access to Numbering Resources*, Comments of the National Cable & Telecommunications Association, CC Docket No. 99-200, at 2 (Jan. 25, 2012); <sup>18</sup> *In the Matter Petitions for Waiver of Commission’s Rules Regarding Access to Numbering Resources*, Comments of the National Telephone Cooperative Association, CC Docket No. 99-200, at 7 (Jan. 25, 2012); Ex Parte Letter from James Bradford Ramsay, General Counsel, NARUC General Counsel, to Chairman Genachowski, Commissioner McDowell, and Commissioner Clyburn, at 5 (March 30, 2012).

<sup>19</sup> There are other issues with the AT&T Ex Parte letter filed May 21, 2012. Ex Parte Letter from Robert W. Quinn, Jr., SVP, Federal Regulatory, AT&T Services, Inc., to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission (May 21, 2012). The CLEC Coalition may file a further response to that letter.

<sup>20</sup> *Vonage May 7 Ex Parte*, at 7.



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in its recent reply comments on the SmartEdgeNet and Millicorp waiver petitions.<sup>21</sup> In short, Vonage and others have suggested a number of different standards (*e.g.*, public company, interconnected VoIP provider), but none of those suggested standards has any meaningful teeth, and the recommended standard of Vonage and others is constantly changing. No one knows what measure the Commission is applying, pointing to the need for a rulemaking if the Commission is to continue down this path. In the *Vonage May 7 Ex Parte*, Vonage relies upon “the FCC’s ability to evaluate the qualifications of Vonage and other petitioners,”<sup>22</sup> but Vonage fails to recommend a clear and transparent standard.

The SBCIS waiver order offers even less guidance, stating that non-carrier VoIP providers need only demonstrate the “special circumstance” that they must rely on carriers to obtain phone numbers in order to obtain a waiver:

We find that special circumstances exist such that granting SBCIS’s petition for waiver is in the public interest. Thus, we find that good cause exists to grant SBCIS a waiver of section 52.15(g)(2)(i) of the Commission’s rules until the Commission adopts numbering rules regarding IP-enabled services. Absent this waiver, SBCIS would have to partner with a local exchange carrier (LEC) to obtain North American Numbering Plan (NANP) telephone numbers.<sup>23</sup>

This tautological standard—in order to obtain carrier rights you need only prove effectively that you are not a carrier—would open the floodgates wide. The *SBCIS Waiver Order* is not a viable framework if the Commission intends to start to extend carrier rights and obligations to non-carriers.

Although it is not clear what broader test should be or is being applied, the Commission should at least demand that a waiver petitioner make a strong showing of expertise in number administration.<sup>24</sup> Vonage claims that it has a history of “responsible management of numbers it

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<sup>21</sup> *In the Matter of Administration of the North American Numbering Plan*, Reply Comments Of Bandwidth.Com, Inc., Level 3 Communications, LLC, and COMPTTEL, at 2-4 (May 15, 2012).

<sup>22</sup> *Vonage May 7 Ex Parte*, at 8.

<sup>23</sup> *In the Matter of Administration of the North American Numbering Plan*, Order, ¶ 4 (Feb. 1, 2005) (*SBCIS Waiver Order*) (citations omitted).

<sup>24</sup> Vonage’s claim that it cannot submit to state regulation is without merit. *Vonage May 7 Ex Parte*, at 8. Vonage has made an affirmative choice not to be state regulated by aggressively pressing its claim that its services are not “telecommunications services” and that it is not a “telecommunications carrier.” Many VoIP providers who offer services similar to Vonage’s have chosen to become state-certificated carriers, including members of the CLEC Coalition that offer a wide variety of IP-based services. Vonage merely wants to have its cake and eat it, too, seeking the deregulation of a VoIP provider and the rights (but not the obligations) of a carrier.

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has received indirectly . . . .”<sup>25</sup> But it is unclear what management is required when the wholesale carrier and not Vonage is the party interfacing with the state commissions and filing all relevant numbering reports. Moreover, the *Vonage May 7 Ex Parte* demonstrates that Vonage is sorely lacking in expertise, with no understanding of what it means to be a Code Holder, what is required to obtain an LRN, and other basic principles of number administration. On this basis alone, the Commission should deny the Vonage and other pending Petitions.<sup>26</sup>

If you have any questions or require additional information, please do not hesitate to contact me at 202.659.6655.

Sincerely,

/s/ James C. Falvey

James C. Falvey  
*Counsel for CLEC Participants*

cc: Michael Steffen  
Sharon Gillett  
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<sup>25</sup> *Id.* at 8.

<sup>26</sup> Vonage also tries to place itself in the company of federally licensed wireless carriers that obtain direct access to phone numbers. *Id.* at 8. Wireless carriers, however, are: 1) authorized carriers that do not require a waiver of the Commission’s rules; 2) licensed by the FCC in a manner that subjects them to initial scrutiny; and 3) subject to a carefully orchestrated framework of federal regulation developed, not by *ad hoc* waivers, but by an extensive and detailed series of FCC rulemakings. *See, e.g., Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, Notice of Proposed Rulemaking, 11 FCC Rcd 5020, 5074-76, ¶ 116 (1996).